

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 718 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TUKARAM @ TUKO PANDURANG SAVANT

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.S.P.Dave,AGP for the Respondents.

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 20/03/96

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner detenu has challenged the impugned order of detention dated 26.9.95 annexure A passed by the Commissioner of Police, Surat City, Surat, under the Gujarat Prevention of Anti Social Activities Act,1985 ("the PASA Act" for short) for preventing him from acting in any manner prejudicial to the maintenance of the public order, in exercise of the

powers conferred under sec.3(2) of the PASA Act.

2. The detenu was served with the grounds of detention and the necessary documents on the basis of which, the impugned order of detention was passed.

3. One of the grounds of challenge to the impugned order of detention is that the right of the petitioner - detenu to make effective representation has been adversely affected inasmuch as the statements of the witnesses on which reliance is placed to hold that the activities of the detenu are adversely affecting the public order are blank and, therefore, it amounts to non supply of documents.

4. Sec.9(1) of the PASA Act provides that when a person is detained in pursuance of the order of detention, the detaining authority shall, as soon as possible but not later than seven days from the date of detention, communicate the grounds on which the order has been made and shall afford the detenu an earliest opportunity of making representation against the order to the State Government. To make representation, it is now well established that all the documents on which the detaining authority has relied on are required to be supplied to the detenu to enable him to make effective representation as contemplated under Art.22(5) of the Constitution of India. If some of the documents relied on for passing the detention order are not supplied, it adversely affects and prejudices the right of the detenu to make an effective representation.

5. In this case, the detaining authority has relied on the statements of certain witnesses and has claimed privilege to disclose their names. One can appreciate that if there are blanks pertaining to the names and addresses with a view not to disclose his identity in consonance with sec.9(2) of the PASA Act. But the statements which are supplied to the detenu are blank in material particulars. In the statement of the first witness, there are five blanks. In the statement of witness No.2, there are seven blanks. In the statement of witness No.3, there are one blank. It is submitted by the learned counsel for the petitioner that the supply of such documents with blanks as aforesaid amounts to non supply as it does not give full meaning of the statements and/or documents and, therefore, there is infraction of Art.22(5) of the Constitution of India and, therefore, the impugned order of detention is liable to be quashed and set aside.

6. Mr. Dave, learned AGP appearing for the State has contended that these blanks have been made good in the grounds of detention. If the blanks are filled up or can be read in from the grounds of detention, there was no reason for the detaining authority not to fill the blanks and supply full and complete documents to the detenu. This apart, there is nothing on record to show that the blanks which are in the statements may be even read from the grounds of detention supplied to the detenu. In myview, these arguments does not satisfy the requirement to supply full and complete documents to the detenu. Therefore, the arguments advanced by Mr. Dave, learned AGP cannot be accepted that the statements are not blanks and can be read with the aid and assistance of the grounds of detention and the supply of such document has adversely affected the right of the detenu to make effective representation and therefore, the impugned order of detention is liable to be quashed and set aside.

7. As this petition can be allowed and disposed of on this ground alone, other grounds and the contentions raised by the petitioner in the petition are not considered in this judgment.

8. In the result, this petition is allowed. The impugned order of detention dated 26.9.95 Annexure "A" passed by the Commissioner of Police, Surat City, Surat is hereby quashed and set aside. Writ of Mandamus be issued to the respondent No.3 to set the petitioner detenu at liberty forthwith if not required in any other case. Rule is accordingly made absolute with no order as to costs.

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